

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ERIC GUNTHER, individually and on :  
behalf of all others similarly situated, :  
: Plaintiff, :  
: :  
- against - : No. 09-2966-ADS-AKT  
: :  
CAPITAL ONE, N.A., d/b/a CAPITAL ONE :  
BANK, :  
: Defendant. :  
----- :  
X

**NOTICE OF JOINT MOTION FOR ENTRY OF FINAL ORDER AND JUDGMENT  
APPROVING AMENDED CLASS ACTION SETTLEMENT**

PLEASE TAKE NOTICE THAT Plaintiff Eric Gunther, individually and on behalf of all others similarly situated (“Plaintiff”), and Defendant Capital One, N.A., d/b/a Capital One Bank (“CONA”), jointly will move this Court, before the Honorable Arthur D. Spatt, located at 100 Federal Plaza, Central Islip, New York, on December 7, 2010, at 9:00 a.m. or as soon thereafter as counsel may be heard, for a Final Order and Judgment Approving the Amended Class Action Settlement Agreement, dated September 15, 2010, and preliminarily approved by this Court on September 24, 2010 (the “Amended Settlement Agreement”).

In support of this Motion, the Parties submit herewith a joint proposed Final Order and Judgment Approving Settlement as required by the Amended Settlement Agreement. In support of final approval, CONA is submitting a separate Memorandum discussing the agreed revisions to the previously-submitted [Proposed] Final Order and Judgment Approving Settlement.

In further support of the Motion, Plaintiff and the Settlement Class contemporaneously submit Plaintiffs’ and the Classes’ Memorandum of Law in Support of Final Approval of Class

Action Settlement, the Declarations of Class Counsel and the Declaration of Robin Niemiec of Rust Consulting, Inc.

No party has objected to the Amended Settlement Agreement; and only five parties have requested exclusion from the Settlement. Therefore, CONA does not submit a separate Memorandum of Law in support of Final Approval. However, CONA generally agrees with the points and authorities made in the Memorandum of Law that is submitted by Plaintiff and the Settlement Class, and believes the Amended Settlement Agreement should receive final approval.

Dated: November 29, 2010

**WHALEN & TUSA, P.C.**

/s/ Joseph S. Tusa

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*Counsel for Capital One, N.A.*

*Counsel for Plaintiff and Class Counsel*

**DECLARATION OF SERVICE**

Bradford C. Mulder, hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

That on November 29, 2010, I served a true copy of the attached Notice of Joint Motion for Entry of Final Order and Judgment Approving Amended Class Action Settlement, and Memorandum Summarizing Certain Provisions of Final Order and Judgment Approving Amended Class Action Settlement, with Exhibit A, upon Class Counsel at the addresses listed below, via First Class Mail, by depositing same in a duly enclosed and sealed wrapper, with the correct postage thereon, in an official letter box duly maintained by the Government of the United States of America within the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 29, 2010.

/s/ Bradford C. Mulder  
Bradford C. Mulder

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